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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,463	03/08/2001	Nadia Avelle	P66420US0	4904

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EXAMINER

WANG, SHENGJUN

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/800,463	<b>Applicant(s)</b> AVALLE, NADIA	
	<b>Examiner</b> Shengjun Wang	<b>Art Unit</b> 1617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 6-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>January 15, 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

Receipt of applicants' amendments and remarks submitted December 12, 2003 is acknowledged.

#### *Claim Rejections 35 U.S.C. 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 6-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gustafsson et al. (of record), in view of Norling et al. (US 5,958,458).

3. Gustafsson et al. teaches a sustained release coated microparticles (see the abstract). The preferred core material for the microparticles is starch (col. 4, lines 44-45). Starch is considered an excipient (see page 4, lines 10-12 herein in the specification). Preferred coating polymers are polyester or copolymers from alpha hydroxy acids, particularly, polylactide. Various agents may be incorporated into the coating, including ascorbic acid (see, col. 4, lines 44-63). The coating may be realized by preparing a polymer solution and applied to the core particles. The drying can be accomplished by any appropriate means, such as spray drying. Ethyl acetate is used in the procedure for applying the coating to the particles (col. 10, lines 15-45). The amount of the polymer coating materials range from 5 to 100 percent by weight relative to the core weight, i.e., 2.5 to 50 % of the total particle weight (see claim 22).

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4. The reference does not teach expressly the employment of kaolin, or the particular percentage of each component, or the particular process of coating.

5. However, Norling teaches that the employment of polylactide as coating material for pharmaceutical particles in various pharmaceutical forms is known, and kaoline is known as inert carrier in pharmaceutical particulate composition. See, particularly, column 9, line 60 to column 10, line 34, and the claims.

6. Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to make coated particulates with kaoline as carrier because kaoline is a known pharmaceutical carrier, particularly in particulate form.

Further, it would have been obvious to make coated particulates with the particular percentage of each components, or with the particular process herein claimed because such percentage or process are generally disclosed by the reference. It is well settled in the patent law that it is not inventive to discover the optimum or workable ranges by routine experimentation.” In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Note the intended use of the particles “cosmetic” is not render the claimed particle any patentable weight since it is well settled that the “intended use” of a product or composition will not further limit claims drawn to a product or composition. See, e.g., In re Hack 114 USPQ 161. Further, the functional description of the hydroxy acid polymer (degrade and release hydroxy acid) is not seen to further limit the claims since the properties of the polymer cannot be separated from the polymer.

### ***Response to the Arguments***

Applicants’ amendments and remarks submitted December 12, 2003 have been fully considered, but are moot in view of the new ground rejection.

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*Allowable subject Matter*

A coated cosmetic powder comprises:

a powder consisting of talc, mica, kaolin, nylon, pigments, spherical silica, nonspherical silica, or the mixture thereof;

A coating applied to the powder, wherein the coating comprise at least one alpha hydroxy acid polymer or copolymer, whereby said alpha hydroxy acid polymer or copolymer can degrade and release onto the skin of a wearer at least one of one of alpha hydroxy acid monomer or oligomer on application of said cosmetic powder to the skin; and wherein the said alpha hydroxy acid polymer or copolymer is in a quantity between 0.1 to 20% by weight of the coated cosmetic powder, and said powder is in a quantity between 60 to 99% by weight of the coated cosmetic powder.

Prior art teaches alpha hydroxy acid polymer coated particles wherein various ingredients, including some of those cosmetic ingredient herein, may be part of the core. (Gustafsson et al. Norling et al.) Prior art also teach the usefulness of alpha hydroxy acid polymer in cosmetic products (see, e.g., Coury et al. US 5,879,688). However, there is no sufficient suggestion to arrive a coated cosmetic powder, wherein the core is consisting of the particular cosmetic ingredients, and with particular amounts of alpha hydroxy acid and cosmetic powder.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (571)272-0632. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571)272-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

**SHENGJUN WANG  
PRIMARY EXAMINER**



Shengjun Wang

March 17, 2004